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No. 486

In the Supreme Court of the United States

October Term, 1931.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *ET AL., Appellants,*

vs.

CHAMPLIN REFINING COMPANY, *Appellee.*

Appellants' Statement of Basis of Appellate Jurisdiction.

J. BERRY KING,
Attorney General of the State of Oklahoma;

JESS A. BALLARD,
Assistant Attorney General of the State of Oklahoma;

E. S. RATLIFF,
Attorney for the Corporation Commission;

JOHN H. MILEY,
W. P. Z. GERMAN,
Special Counsel,
Attorneys for Appellants.

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vs.

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APPELLANTS' STATEMENT OF BASIS OF APPELLATE JURISDICTION.

This is a cross appeal taken by the defendants below from that portion of the final decree of the court below entered September 11, 1931, which adjudged invalid and permanently enjoined the enforcement by appellants, defendants below, of sections 8 and 9, the so-called penal provisions, of the Oklahoma Oil Conservation Act. The decree sustained the validity of other provisions of the Act and orders of the Oklahoma Corporation Commission made pursuant thereto, and refused to enjoin their enforcement (other than by proceedings under said sections 8 and 9), and the appellee herein appealed therefrom and its case is No. 485, October term, 1931. Appellants herein concede the

jurisdiction of the court on the appeal of appellee in case No. 485, and believe that, such jurisdiction existing, then for that reason alone jurisdiction of the case on cross appeal exists.

This court has jurisdiction to review on appeal the decree below by reason of the provisions of section 266 of the Judicial Code as amended (United States Code, Title 28, Sec. 380), which provides that a direct appeal to the Supreme Court may be taken from a final decree of a three-judge court granting or denying a permanent injunction in a suit instituted in a District Court of the United States seeking an interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state upon the ground of the unconstitutionality of such statute.

The final decree sought to be reviewed was entered by the United States District Court for the Western District of Oklahoma, two circuit judges and one district judge sitting, on September 11, 1931 (R248)*, and the application for the appeal herein was presented on October 17, 1931 (R399).

The suit of the appellee, Champlin Refining Company, plaintiff below, in which said decree was entered, was instituted in said court on September 15, 1930, to obtain an interlocutory injunction and upon final hearing, a permanent injunction against appellants, defendants below, all officers of the State of Oklahoma, except defendant Lewis R. Mor-

* All Record references herein

ris, who is county attorney of Oklahoma County, Oklahoma, to restrain the enforcement, operation and execution by the defendants of a statute of the State of Oklahoma, namely, an act of the Legislature of Oklahoma approved February 11, 1915, commonly referred to as the Oil Conservation Act, entitled, "An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency," a copy of which is attached to the majority opinion below (R218), and the enforcement and execution by appellants, defendants below, against the appellee, plaintiff below, of certain orders, rules and regulations issued and promulgated by the appellant Corporation Commission of Oklahoma acting by the appellants, the members of said Commission, under the authority granted to said Commission by certain of the provisions of said act. The principal ground upon which said injunctive relief was sought was that the said statute of the State of Oklahoma and said orders, rules and regulations were and are void, in that they violate to the injury of the appellee, the provisions of the Fourteenth Amendment to the Constitution of the United States, and the commerce clause of section 8, article I of said Constitution. Among other things, the appellee alleged and appellants admitted that appellee owns certain producing oil wells within certain common sources of supply of crude oil within said state, that the operation of said wells is affected by said statute and that the defendant Corporation Commission and its members had issued certain rules, regulations and orders pursuant to authority pretended to be vested in them in and by the provisions of said statute for

the enforcement thereof, and were enforcing the same against the appellee in the operation by appellee of its said oil wells. See plaintiff's third amended and supplemental bill of complaint (R.6.), and defendants' answer thereto (R37.).

The appellee caused its application for an interlocutory injunction to be heard before a three-judge court organized according to the provisions of said section 266 of the Judicial Code, as amended. Said application was denied on February 9, 1931 (R.3.).

Thereafter the appellee caused to be heard before a court of three judges organized as aforesaid, its application for a permanent injunction, and the court after hearing the evidence and making and filing its findings of fact (R. 177) and conclusions of law (R213), entered its final decree on September 11, 1931 (R248), denying said application in all respects except that it permanently enjoined the appellants J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, their assistants and successors in office, from enforcing the provisions of sections 8 and 9 of said Act upon a holding that the provisions of said sections 8 and 9 are void in that they are limited to violations of provisions of said act and do not cover violations of orders, rules and regulations of the Corporation Commission issued pursuant to said act and that the other provisions of the act, namely, sections 1, 3, 4 and 5, under which the said orders, rules and regulations were issues are too vague, indefinite and uncertain to sustain criminal prosecutions under section 8 and receivership proceedings under section 9, and in effect, that the enforcement against appellee of sections 8 and 9 would be violative of the rights of appellee

under the provisions of the Fourteenth Amendment to the national constitution.

Thus after hearing and denying the application for an interlocutory injunction a three-judge court granted the above mentioned permanent injunction in a suit which is of the nature described in and covered by the provisions of section 266 of the Judicial Code as amended.

Cases sustaining the jurisdiction of the Supreme Court are cited as follows:

Stratton v. *St. L. S.-W. R. Co.*, No. 6, October term, 1930, not yet officially reported;
Louisville, etc., R. C. v. *Garrett*, 231 U. S. 298;
Clark v. *Poor*, 274 U. S. 554;
In re Buder, 271 U. S. 461;
Shaffer v. *Carter*, 252 U. S. 37;
Pacific Telephone, etc., Co. v. *Kuykendall*, 265 U. S. 196.

It is respectfully submitted that this court has jurisdiction.

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